

ADVISORY OPINION 2002-001

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

March 1, 2002

Joseph K. Jarboe
139 East Main Street
Georgetown, Kentucky 40324

Dear Mr. Jarboe:

This is in response to your letter dated February 6, 2002 requesting an advisory opinion regarding the use of your campaign funds in light of the Kentucky Legislature's recent redistricting. Specifically, you state that you had filed to run as a Kentucky State Senate candidate for the 30th District. Upon the enactment of the redistricting bill, HB 1, the district in which you currently qualify for residence purposes has become the 17th senatorial district, encompassing Scott, Grant, Owen, and certain precincts of Kenton counties. Therefore, you have withdrawn as a candidate for the 30th senatorial district. Specifically, regarding the funds remaining in your campaign account, you ask the following questions, the Registry's response to which follows:

(a) **May I retain the funds raised to date with the expectation that there MAY be a special election in the 17th senate district late in 2002 and I MAY be the republican candidate?**

As you indicate in your letter, the current incumbent State Senator from the former 17th senatorial district has filed to run this year for his newly formed home district, the 30th senatorial district. These circumstances may trigger a vacancy and subsequent special election for the 17th senatorial district.

KRS 121.180(10) governs how a candidate may dispose of funds remaining in a campaign account, and provides as follows:

Except as provided in KRS 121A.080(6), any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto. (Emphasis added.)

In 1992, when the Kentucky Legislature in Special Session enacted earlier redistricting, the Registry, by opinion, held that candidates affected by that year's redistricting could use their existing campaign funds to run for a seat in their newly established district. See Letter to Mr. Robert E. Gable, March 9, 1992. The Registry specifically limited its opinion to members of the House of Representatives affected by redistricting, who were seeking to run again for State Representative in their new district number. Since that opinion, the Registry has consistently interpreted the applicable statute to allow candidates affected by state legislative redistricting to retain their funds to run for the same office in their new district. See, e.g., Minutes of the Registry's Regular Meeting, January 10, 1995.

Therefore, pursuant to KRS 121.180(10), you may retain the funds you have raised to run for State Senate and may use those funds to run for the same office in your newly formed senatorial district, Senate District 17. Further, if a special election is called for the 17th senatorial district, and if you are nominated by your party to run, you may use the funds transferred to run in the special election.

(b) If not my plan is to return the funds to the contributors. Is that acceptable?

As cited above, KRS 121.180(10) also permits you to return the unexpended balance of funds remaining in your campaign account to your contributors, pro rata.

(c) In either case, what are my reporting requirements?

In order to close out your current campaign account, you must file a final election finance statement terminating your current account, which demonstrates no unexpended balance. For details regarding how to file such a statement, you may contact the Registry staff.

Further, if you elect to begin raising and spending money, including the funds transferred from your existing fund, for the same office (Kentucky State Senator) in the 17th Senatorial District, prior to the year of the election, you must file with the Registry a letter indicating your intention to begin raising and spending funds for the next election of that office. Currently, the election of the Kentucky State Senator for the 17th District is scheduled for 2004. However, if you choose to begin raising funds for election to the 17th senatorial district, and if a special election is called and you are nominated, you will be permitted to use the funds in the special election.

(d) If there is no special election later to fill the district 17 senate seat could I retain the funds collected to run in the 2004 elections and if so what would be those reporting requirements.

As stated above, you may retain the funds to run for Kentucky State Senator for the 17th District in 2004. Candidates who register by filing a letter of intent to run for an office prior to the year in which they will appear on the ballot have additional reporting requirements under KRS 121.180. Specifically, pursuant to KRS 121.180(3)(b)1., you will have quarterly reports due until 2004, the year in which you shall appear on the ballot, at which point you will have reports due as provided under KRS 121.180(3)(b)2.,3 and KRS 121.180(4). For your specific reporting dates, you may contact a member of the Registry's staff upon filing your letter of intent.

This opinion reflects the Registry's consideration of the specific transactions posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

Enclosures

RFC/jh

Cc: Registry Members

Sarah M. Jackson
Executive Director